

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

<p>IN THE MATTER OF:</p> <p><b>D.R.A. PROPERTIES, L.C.</b> Polk County Iowa</p> <p>AFO #67361</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER NO. 2023-WW-10</p>
---	--

TO: Stuart Feldstein, Registered Agent  
Matt Farver, Vice President of Construction  
D.R.A. Properties, L.C.  
1525 NE 36<sup>th</sup> Street  
Ankeny, Iowa 50021

**I. SUMMARY**

This administrative consent order is entered into between D.R.A. Properties, L.C. (DRA) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order due to violations of DRA's storm water National Pollutant Discharge Elimination System (NPDES) permits at its James and Campbell construction site and its Centennial Estates construction site (collectively referred to as sites). DRA agrees to implement and maintain adequate storm water controls at all sites until the developments are complete and to pay an administrative penalty of \$8,000.00. In the interest of avoiding litigation, the parties have agreed to resolve the violations alleged herein through entry of this administrative consent order.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Emma Huston, DNR Field Office 5  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515-901-5642

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515/210-3408

**Appeal or Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: D.R.A. PROPERTIES, L.C.

**II. JURISDICTION**

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

Campbell and James Construction Site

1. On November 4, 2022, Emma Huston, DNR Field Office 5 environmental specialist, conducted a routine inspection at DRA's Campbell and James residential subdivision construction site in Ankeny, Iowa (NW Corner of NE 102<sup>nd</sup> Avenue and NE Four Mile Drive between NE 29<sup>th</sup> Street and I-35, Polk County). The site was operating under NPDES General Permit #2 number 41912-41554, issued on October 19, 2022. During the inspection there was no activity occurring at the site. However, Matt Farver, DRA representative, stated that clearing and grubbing was taking place at the site. Ms. Huston noted that significant grading had also taken place at the site. Several buildings had been demolished and most of the debris had been removed from the site. Ms. Huston noted two large topsoil stockpiles with a significant portion of the site being bare and disturbed soil. At the time of the inspection it was raining and runoff from the site was discharging sediment into Fourmile Creek. The highly turbid water was visible along the north bank of Fourmile Creek for more than 100 feet.

2. On November 7, 2022, Ms. Huston spoke to Mr. Farver on the telephone. Mr. Farver stated that DRA was in the process of reviewing bids for erosion control contracts and that the site did not have a Storm Water Pollution Prevention Plan (SWPPP) in place and weekly inspections had not started.

3. On November 10, 2022, DNR issued a Notice of Violation letter to DRA for the violations discovered as a result of the DNR inspection. The letter informed DRA the violations would be referred for further enforcement.

Centennial Estates Construction Site

4. On January 18, 2023, Dennis Thielen, DNR Field Office 5 environmental specialist senior conducted a routine inspection at DRA's Centennial Estate Plat 3 in Ankeny, Iowa (NE Beechwood Court and NW 29 Street, Polk County). The site was operating under ND PES General Permit #2 number 37548-37188, issued on October 26, 2020. During the inspection there was no activity occurring at the site, with a majority of the site being temporarily stabilized with straw before winter shutdown. However, Mr. Thielen observed rill and gully erosion throughout the site due to lack of internal controls. There were no curb controls

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: D.R.A. PROPERTIES, L.C.

installed on portions of the site resulting in significant amounts of sediment in the street gutters and significant offsite tracking. The stormwater intakes were full of sediment while other intakes were covered in sediment and straw mulch. Sediment was observed off-site in the road ditch as there were no perimeter controls to prevent the sediment from leaving the site.

5. The SWPPP was not on site at the time of the inspection, but was provided by email to Mr. Thielen later in the date. The SWPPP was signed; however, it failed to contain all the contractor certifications. The records, updates, repairs, and maps were all maintained within the SWPPP. The last four weekly inspections were provided and documented several deficiencies that were not corrected within the required 7 days. The deficiencies included disturbed areas not being stabilized; perimeter controls and sediment barriers were not adequately installed; and adjacent roads had excessive sediment tracking. These deficiencies were the same those noted during Mr. Thielen's inspection.

6. On January 25, 2023, DNR issued DRA a Notice of Violation letter for the violations discovered as a result of the DNR inspection. The letter informed DRA the violations would be referred for further enforcement.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code sections 455B.103(A) and 455B.197 authorize the issuance of permits for storm water discharges. The Environmental Protection Commission (Commission) has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge at 567 IAC 60.2 and in 567 IAC chapter 64. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading, and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.

2. 567 IAC 64.3(1) states that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. DNR Field Office 5 noted several violations of DRA's NPDES permits at two construction sites in November 2022 and January 2023. The above stated facts demonstrate several incidents of noncompliance with this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: D.R.A. PROPERTIES, L.C.

3. 567 IAC 61.3(2)“c” and “e” state:

c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectional color, odor or other aesthetically objectional conditions. [and]

e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

During the DNR Field Office 5 visit to the Campbell and James construction site, it was noted that sediment from the construction site was released into Fourmile Creek. The above stated facts demonstrate noncompliance with these provisions.

**V. ORDER**

THEREFORE, the DNR orders and DRA agrees to do the following:

1. Implement and maintain adequate storm water controls at all sites until the developments are complete; and
2. Pay an administrative penalty in the amount of \$8,000.00 within 60 days from the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$8,000.00. The administrative penalty is determined as follows:

Economic Benefit - 567 IAC Chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: D.R.A. PROPERTIES, L.C.

benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” An economic benefit was obtained through avoiding the cost of installing and maintaining adequate storm water erosion and sediment control measures at the sites. This avoided several thousand dollars in materials and labor expenses. Additionally, DRA failed to conduct the weekly inspections at one of the sites. Thus, it is reasonable to estimate that \$2,000.00 was saved. Therefore, \$2,000.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Failure to properly manage storm water runoff from construction sites degrades surface water quality and deposits excess sediment in water channels. Sedimentation of Iowa’s waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. The erosion and sediment controls contained in DRA’s NPDES permits protect Iowa’s waterways from sedimentation. Such noncompliance thwarts the integrity of the NPDES permit and water quality programs. Therefore, the amount of \$3,000.00 is assessed for this factor.

Culpability – DRA has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. DRA is engaged in the business of development and construction. Therefore, \$3,000.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of DRA. For that reason, DRA waives the rights to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: D.R.A. PROPERTIES, L.C.

\_\_\_\_\_  
KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

Jana Meredith  
\_\_\_\_\_  
D.R.A. PROPERTIES, L.C.

Dated this 28<sup>th</sup> day  
of April, 2023.